

Freedom of Expression in the Era of the Privatization of Reason

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Abstract:

The importance of free speech is beyond dispute in liberal democracy, and is today hardly challenged by anyone, but fundamentalist, religious groups. But which purpose should free speech serve, and how should it be (re)defined and administered in order to fulfill this purpose? I claim that these questions are more important than they may seem, and that they are easily overlooked, if free speech is treated as an end in itself or as something that one should not question at all. In the liberal tradition, freedom of expression was clearly valued for its excellent utility for the progress of society, but not for being an end in itself. In this article, I want, first, to make this point clear (through a reading of John Stuart Mill and Immanuel Kant) and, second, to offer a couple of suggestions for relevant discussions on the restrictions, regulations and reinventions of free speech that might be required today in order to sustain and revive the liberal tradition itself.

Keywords Freedom of expression, public use of reason, populism, Mill, Kant.

Freedom of expression is one of the most sacred values of Western democracies. It is universally defended, and often treated as a kind of crown jewel of democracy. And indeed, it is fundamentally important to democracy, but maybe we tend to forget that in the liberal tradition itself, which is invoked in the solemn declarations of the importance of the “value” of free speech, it is explicitly hailed for its utility, i.e. it is considered as a tool, a means, albeit a massively important one, and not an end itself. In the spirit of the enlightenment philosophers, freedom of expression is an idea that should therefore be developed, improved, and experimented with, much rather than “merely” defended, as if it was above historical change and political needs.

What I would like to do in this article is first to go back and investigate how two of the founding voices of the ideals of free speech in the European tradition, Immanuel Kant and John Stuart Mill, viewed the relation between means and ends in the case of the freedom of expression, and thereby highlight the kinds of discussions, which I think need more attention in order to keep the concept of free speech alive. Secondly, and particularly elaborating further on Kant’s central notion of the public use of reason, I want to indicate a more specific reinvention, which I think is called for in the contemporary political climate, namely a way of revitalizing the idea of a public use of reason in an era where reason seems to have become almost completely “privatized” in the Kantian sense. The revitalization, I will claim, must come from new, collective forms of expression.

Means or end?

When freedom of expression is defended, one should bear in mind that this principle is an excellent means towards a just and prosperous society, but not an end in itself. Or so at least thought John Stuart Mill, and before him Immanuel Kant. To Kant, as it is well known, the only real end in itself is the human being, and therefore any pragmatic or legal principle can only be enlisted as a means to serving this end. One could almost turn around the so-called “formula of humanity” and claim that one should always, according to Kant, “act so, that you treat a legal principle only as a means and not as an end in itself”. Likewise, Mill, in his 1859 classic *On Liberty*, is completely clear and explicit that the freedom of expression is a

means for another end and open for revision. In fact, it must be, since the only real standard for the evaluation of ethical questions, according to Mill, is the contribution, which something makes to overall happiness, and therefore a principle however noble and valuable we might hold it, cannot be an end in and of itself (Mill 1993, 79). The progress of humanity depends on sharing and criticizing ideas, and Mill sees no reason except injury to limit the scope of what might therefore be uttered, but the principle still remains valuable entirely because of its utility, which consists in challenging the “tyranny of the prevailing opinion and feeling” (ibid., 73) and the accompanying unhealthy and reactionary sense of infallibility (ibid., 85).

My claim here is the slightly paradoxical one that lately it has been the doctrine of free speech itself that has become a passively received “hereditary creed” (ibid., 108). Doesn’t this description fit the way in which the notion, if not the reality, of free speech is mostly taken for granted, and thereby the “fatal tendency of mankind to leave off thinking about a thing when it is no longer doubtful,” which according to Mill “is the cause of half their errors” (ibid., 111). A lot of debate is going on about, whether and in which ways the freedom of expression is under threat, (and how we can combat those that pose the threats), but not that much is going on in the field of developing *the very concept of freedom of expression itself*. If freedom of expression is a means, maybe even the essential means, for the progress of society, shouldn’t we consider it with the same scrutiny and openness that we consider any other means – from construction tools to tax regulation? John Stuart Mill, at least, emphasized that having a ready set of principles that are off bounds of discussion is only desirable to “the sort of persons who think that new truths may have been desirable once, but that we have had enough of them now” (ibid., 96).

What appears paradoxical in claiming that the principle of free speech has become a taboo relies precisely on the reduction of the principle to one fundamental proposition with only one possible interpretation. If freedom of expression only consisted in one single, unequivocal dogma that “everything can be expressed without restriction”, the paradox could be formalized in the following way: A. Everything can be expressed without restriction. B. Principle A. may not be challenged. C. Everything cannot be expressed without

restriction. One arrives at this paradox only by maintaining the principle of free speech as such a simple principle without caveats or additional explanations. I claim that this is a misrepresentation of the idea of free speech, historically as well as normatively.

So, what is there to discuss? Firstly, I want to demonstrate that it is in fact almost inconceivable to imagine a completely unrestricted freedom of expression, and that the restrictions, we (must) have, are historically variable. This alone speaks in favor of an ongoing debate about and elaboration of what we consider to be the right concept of free speech. I will claim that there are always both juridical and moral considerations to be made, but also that it is in fact not even clear when we are free to say what we want to say in the first place. Secondly, this leads me to a discussion of Kant's concept of a public use of reason, which I think is in need of new inspiration and experiments.

Limits of free speech

Freedom of expression has always *de facto* been limited, even in the most modern, liberal democracies. Constitutions are usually supplemented by penal regulations that specify how the limitations of free speech are (currently) being defined. This varies over time as well as geography, but restrictions regarding defamation, incitement of violence, racism, blasphemy, etc. exist globally in various forms and degrees. Some restrictions are lifted, but others can be added due to new forms of communication technology, changing social norms or new forms of abuse – or combinations of these. In other words, it is in fact much more difficult to imagine free speech without any legal restrictions than it is to imagine one that is restricted in various ways, and most legislators would probably consider it to be completely irresponsible to lift restrictions without exception. To all, but a very few, it is not a question of whether free speech should be within certain boundaries, but which and where these should be. This obvious fact alone already establishes that the concept of free speech is historically variable and open to scrutiny and debate – or *should* be, on pain of being otherwise considered in a dogmatic, and, ironically enough, un-liberal, way.

The core principle of free speech is always limited by other legal considerations, and the reservoir for discussions and decisions on these considerations could be said to be the wider moral discus-

sions in society about what should be accepted in which situations. In the case of blasphemy, for example, regardless of one's position on the legal question concerning blasphemy, one might still find the moral discussion of it interesting and worthwhile. Even Immanuel Kant argues that there is something right about an image ban, because it creates the appropriate awe towards a highest principle that cannot be spoken in words or drawn in lines – a divinity or a moral principle like the categorical imperative, which lies beyond customary views and legal norms (Kant 1987: 135 [AA 5: 274]). Although this line of argumentation might not motivate one (it does not motivate me) to demand or want to maintain actual laws on blasphemy, the argument itself, I think, does make a lot of sense and does give reason to remind or even reconsider, what our laws are for, and whether or not there is a higher principle than that of legality.

A second example is context, something which is relevant in both legal and moral discussions. Mill himself mentions the sentence "private property is robbery" as an example. When stated in a newspaper, this sentence should be completely legitimate, he believes, as part of the public discussion about economy, but it might be punishable in other circumstances, e.g. when shouted to an excited mob in front of a corn-dealer's house (Mill 1993, 123). Or think of the derogatory names for certain groups of people. In some cases, they are relatively harmless; in others, they can support bigotry and hatred, and maybe even indirectly justify violence. This does not mean that certain words or signifiers must be banned from the language, but that the use of certain words in certain contexts can be blamable, even punishable. (Just like screwdrivers should not be banned, but some uses of them most certainly should).

Thirdly, there are some more general philosophical questions that are less of immediate moral relevance, but nonetheless may throw some light on the issues involved in the very concept of free speech. In the Danish constitution, the section on the freedom of expression is formulated in the way that "everyone is entitled [...] to make public his thoughts". I think this is a wonderful formulation, because it begs the question: What are then *my* own thoughts? Have I thought anything original or new that is really mine, or have I seriously considered some thoughts of others and *made them mine* through autonomous deliberation? Otherwise, what I say might

not really be my thoughts in any genuine sense. I think this is not at all as speculative, as it might immediately sound, because it concerns the very ideal of the enlightenment, which was basically to share thoughts and improve them. When John Stuart Mill talks about the minority point of view, he always talks about the possible insight, truth or value, that is not (yet) accepted by the broader public, but which might precisely contribute to the advancement of society. The ultimate inhibition of the freedom of expression would be the situation, where no new thoughts were being produced. Following again a more pragmatic line in the interpretation of the principle of free speech, the interesting question is not so much the stream of consciousness that is passing through my head, and whether or not I should be allowed to express all of it openly and immediately (again, I think that I should not), but rather the question of how I actually may generate something that broadens the field of what it is possible to think. This might sound a bit solemn, but I think it nonetheless relates to important forms of threats to the freedom of expression other than the ones that one usually discusses within the frame of the prohibition or legality of various opinions within a field of already established boundaries.

Express yourself!

So, what does it mean to express oneself freely; to express one's own thoughts? Can this only be understood in terms of the absence of threats of violence or actual physical restrictions? Or can it be understood also in the way, that we, ourselves, don't even have the means to express ourselves autonomously? That what we say, in many cases, is not our own thoughts in any important sense? The general thrust of Louis Althusser's version of the critique of ideology is precisely that we are always already embedded in ideology to an extent that it is not so much the active restriction of free speech that is the problem, but the normal, non-restricted reality itself which is unfree. Louis Althusser emphasizes how what one could call our spontaneous ideology comes from the interpellation of our surroundings. He called them "ideological state apparatuses" (Althusser 2001), which means all the institutions that reinforce or reproduce the hegemonic picture of the state and its inhabitants: from family and schools to police, government, and of course the media. We are constantly taught how to behave, what to believe – and even

how to see ourselves, which paradoxically includes an ideal of being autonomous, voluntary adherents of the ideology – consumers, for example, who “express ourselves” through our unique choices and purchases, etc., and thereby first of all confirm the ideology, which we inhabit.

We find another formulation of this problem already in Kant’s famous 1784 essay on enlightenment. The essay opens by defining enlightenment as “the human being’s emergence from his self-incurred immaturity” (Kant 1996, 17 [AA 8: 35]) – a slightly paradoxical formulation, for how can you release *yourself* from immaturity? Only by making a kind of modal shift in the way you make use of reason. In a way, we are all subjects of ideological state apparatuses in a very broad sense. Language itself is a gigantic machine for the reproduction of ideas, and it is in and through language that we express our thoughts – or that we *have thoughts* at all. We don’t invent our own language, but assume it, as we learn about the world. But the imperative of enlightenment is therefore not only a suggestion for spreading knowledge and education; it is not simply a question of knowing *more*; it is a practical demand addressed to every single individual: it is not what you know, but how you know it. *Sapere aude!* as it is called: Have the courage to make use of your own understanding (ibid.). This use is certainly not meant to be just any random use that expresses what pops into your mind. On the contrary: It means trying out one’s knowledge, questioning the received viewpoints, and reaching one’s own conclusions through the best possible examination. Kant has a particular name for this procedure: He calls it the public use of reason. It is this concept of a public use of reason that I will take as my focus for a discussion of where we might see the need for new inventions in the field of the freedom of expression, which have both political, moral and philosophical implications.

Public use of reason

Kant develops a distinction between private and public use of reason, which to some seems counter intuitive, but which I think has a significant explanatory power. Reason is of course the very key concept in Kant’s philosophy, and it was thoroughly analyzed in *The Critique of Pure Reason* from 1781. Three years later, however, Kant specifies how reason can be put to use in very different ways, and

he separates those in what he calls “private” and “public” uses of reason. The private use of reason is the one that one makes, when taking care of one’s own interests in the broadest sense, or even the interests of the public, but in ways that reaffirm one’s own standing in society. Reason in this way may separate humans from animals, but only in the sense that humans are more intelligent, understand complex situations and seek the most beneficial solutions. In other words: One makes use of the general capacity for reasoning and understanding the world in ways that correspond with the prevailing order that one is part of. One obtains a salary, for example, for performing a certain function. When a policeman regulates traffic or carries out an interrogation, he is making private use of reason. Paradoxically, therefore, much of what takes place in the “public domain”, in the streets, in schools, in hospitals, on TV, are really forms of the private use of reason.

By “public use of reason”, on the other hand, Kant understands the use, which a person may make as a learned person in front of “the entire public of the world of readers” (ibid., 18 (AA: 37)). The public use of reason is that which you might make at home, in your armchair, when you are writing a letter to the editor or a book or even a letter to a colleague or a friend, where you discuss certain matters. While this might seem secondary, it is in fact this ability that separates the human being, not only from animals, but even from itself in the sense of being able to rise above the immediacy of its surroundings and contemplate what would be more *right*. Enlightenment depends completely on this second use of reason. Kant gives an example: If you are serving in the army, you are obliged to follow orders without debating their usefulness or legitimacy. However, as a citizen, the soldier might afterwards debate, whether the army is fulfilling its purpose or indeed whether having an army at all serves a legitimate purpose. Teaching philosophy is another example, (mine, not Kant’s), which I think highlights some of the issues concerning free speech today. Obviously, teaching philosophy must be about teaching students how to think for themselves, what counts as a valid argument, where philosophy can provoke thinking or contribute to a better understanding of our predicament as human beings, etc. Nonetheless, fulfilling the function of a teacher clearly also shares many traits with the one of the soldier: You are in the service of the state, performing a specific function for which

you obtain a salary and certain benefits, like social standing, “cultural capital”, etc. Performing your role, you have to abide by the exam regulation and take into due consideration the interests of your employer or funder, which more and more exclusively means focusing on the *employability* of the students, as it is so poetically called: The question is not, whether they will contribute to the ultimate aims of humanity, but whether they will get a job, any job, and pay taxes. Maybe this increased focus on the outcome of teaching, how to promote the relevant competences for the job market, is concretely changing the way, you teach students - or maybe you will insist that training their public use of reason is the best preparation for any occupation, they could get. But even so, it becomes more and more difficult to distinguish, whether, when teaching or testing students at exams, you are in fact making a public or a private use of reason. And what are they?

The pragmatic line in interpreting the principle of “making public one’s own thoughts” relates to this question of a public use of reason. Performing well within already given frames and (implicitly or explicitly) confirming the overall picture of social norms, etc., would usually fall within the “private use of reason”, while the “public use of reason”, the capacity for critical and independent thinking, must rely on other spaces. One could talk about concerted efforts to promote the public use of reason in various kinds of teaching, research, arts, media, etc., which have traditionally been supported by government funding with the explicit aim of furthering independent thought at “arms length” from the funders themselves. To promote public use of reason requires time and an environment of experimentation and scrutiny that has come under severe pressure within recent decades. What I call the privatization of reason is the general starvation of the public use of reason. We find it in universities, newspapers, public service media, political parties, NGO/lobbyist work, advertising, etc. We find it in New Public Management, in the standardization and objectification of learning, in the austerity politics of the “Competition State” (cf. Cerny 1997; Pedersen 2011), etc, etc. Everywhere, compartmentalized experts and professionals are moving forward, and more and more, public use of reason is marginalized or made doubtful, as if the common belief in the very existence of a public use of reason has evaporated (“she is just saying X, because she really wants to promote Z”).

In Kantian terms, what we risk losing with the privatization of reason is the sense of the human being as part of what he calls a “kingdom of ends”, i.e. a realm of universal reason, where everyone participates in virtue of their capacity as reasonable creatures alone. The ends that this kingdom serves are and can only be human beings, not doctrines or rules or nations. Not growth rates or employability. Making public use of reason thus entails not only that you distance yourself from your immediate interests and tasks in society, but also that you consider your fellow humans as someone who can appreciate an observation or an argument about a certain state of affairs. By making public use of reason, you treat your fellows as ends in themselves – as someone who can be addressed as rational creatures who are able autonomously to set their own ends and not only follow their immediate inclinations or orders, regardless of their interests, identities or mores.

The liberal principle of freedom of expression thus relies on the principle distinction between the universal subjectivity that can be ascribed to any individual, and the concrete, embodied existence of our cultural identity. Any human being contains both aspects – a universal and a particular, if you will. In other words, the liberal tradition distinguishes between an empty subject (the subject of enunciation) that upholds a right to express its thoughts and which can be addressed as such, and the concrete identities and interests, which one might simultaneously have (the subject of the enunciated). If one does not accept the “empty”, universal subject as a politically relevant concept, one does not agree with the liberal idea of free speech. I think this is where the real division between the liberal tradition and right wing populism can be found. When the latter proclaim the right to free speech, it is usually a strategic, rather than a principled stance. They will insist, for example, on the right to criticize Islam, use derogatory language about foreigners, etc., but not on the right to ridicule their own national or religious symbols. Therefore, they are actually not for freedom of expression in Mill’s or Kant’s sense, because they do not agree philosophically with the idea of the universal human subject. The empty subject is a theoretical fiction in the eyes of right wing populism, because the human being is always embodied, placed in a culture, endowed with a particular set of traditions, values, etc.

Collectivization of the freedom of expression

The distinction between the subject of the enunciation (the “empty”, universal subject) and the subject of the enunciated (what we tell about ourselves, our values, etc.) is important to keep in mind, before I move to the concluding point. For I nonetheless think that a certain kind of populism is necessary to make it possible to enunciate new kinds of political solutions and reinvigorate the concept of a public use of reason.

Populism is the political movement that claims to speak on behalf of the people (*populus*), and ideally that would imply a kind of enunciation that cannot so easily be reduced to “private interests”. When public debate has been so thoroughly privatized, as it has today, it may be time to experiment with the very idea of the public, i.e. to “open spaces”, if you will, where it is possible to speak again as a public and to a public – in the best interests of mankind in general, as Kant and Mill would have put it. What is required is a new form of free speech that fosters genuinely new thoughts and enables a reinvigoration of the public use of reason. The right wing populist movements, however, do not contribute much to this ambition, as they are emphasizing certain forms of well-known content (what Jacques Rancière has called “archépolitics” (Rancière 1999, 65)), much more than they are really contributing to political progress, neither on the formal level, nor on the level of contents.

Nonetheless, I think that some of the movements and parties that have emerged since the global financial crisis in 2008 have brought interesting new experiments in the struggle for raising voices that were very recently considered utopian, irresponsible or impossible, but nonetheless rely on strictly democratic ideals and methods. I think it is reasonable to suggest that what many of these movements are trying to answer is the question: “How does one reinvent the public use of reason in an age of almost complete privatization of reason and of the so called “politics of necessity”? “How does the public emancipate itself, when it has been almost completely disempowered by the prevailing economic order?” As space does not allow me to go into any empirical detail and analyze e.g. Occupy Wall Street in the US, Podemos in Spain, or Syriza in Greece, I will instead attempt a more formal definition of my point, maybe just mentioning in passing that one of the characteristics of these movements is precisely that they experiment with more democratic

forms of decision making, voting, institution building, etc. (See e.g. Zechner/Hansen, 2015).

In right wing populist movements, the people (in the sense of a general subject of enunciation with the right to decide for itself) is not enunciating a new content. Rather, an old content is identifying the subjects that are mobilized to repeat it as "the people". The difference is, whether you move from a particular content, regarding for instance national identity, and "backwards" toward the position of enunciation, demanding that all speaking subjects must be shaped in "our" picture, or whether you move from the empty, universal subject to an experiment or an act that risks the articulation of what *we* could want to say. In the first case, collectivity is established as a homogenizing effect of definitions and initiatives from a political elite; in the second, collectivity is an emergence of something new from a more or less spontaneous act of a group of otherwise very different individuals. Maybe one could distinguish between collectivity through assimilation to a pre-established identity versus collectivity through a unification of the non-identical in a demand for new political ideas.

In any case, the limit of populism, which must be kept firmly in mind, if one wants to stay within the broad frame of the tradition of the enlightenment, (and I think one should stay within the broad frame of the enlightenment), is the right to disagree with it, as well as the right to express this disagreement.

References

- Althusser, L. 2001 [1970]. "Ideology and Ideological State Apparatuses", in: *Lenin and Philosophy and other essays*, New York: Monthly Review Press.
- Cerny, P. 1997. "Paradoxes of the Competition State: The Dynamics of Political Globalization", *Government & Opposition*, Vol. 32, 02, pp. 251-274.
- Kant, I. 1987 [1790]. *The Critique of Judgment*, Indianapolis/Cambridge: Hackett Publishing Company.
- Kant, I. 1996 [1784]. "An answer to the question: What is enlightenment?", in: *Practical Philosophy*, New York: Cambridge University Press, pp. 11-22.

- Mill, J. S. 1993 [1859]. "On Liberty." In: *Utilitarianism, On Liberty, Considerations on Representative Government*, London: Everyman.
- Pedersen, O. K. 2011. *Konkurrencestaten*, København: Hans Reitzels Forlag.
- Rancière, J. 1999 [1995]. *Disagreement: Politics and Philosophy*, Minneapolis/London: University of Minnesota Press.
- Zechner, M. and B.R. Hansen, 2015. "Building Power in a Crisis of Social Reproduction", *ROAR Magazine*, Issue 0.